

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5993 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

IDRISHBHAI ISABJI DILER

Versus

STATE OF GUJARAT

Appearance:

MR JB PARDIWALA for Petitioner
MR UA TRIVEDI AGP for Respondent No. 1, 3, 4
MR SUNIL B PARIKH for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/12/96

ORAL JUDGEMENT

1. The District Magistrate, Valsad in exercise of powers under section 3 (1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'the PBM Act, 1980'), on being satisfied with respect to (1) Salimbhai Hasanbhai Suleja and (2) Idris Isabji Diler (petitioner) with a view to preventing them from acting

in the manner prejudicial to the maintenance of supplies of essential commodities viz. L.P.G. Gas Cylinders, it is necessary to detain them and passed the order of detention dated 11/07/1996.

2. It appears from the grounds of detention that the detenu was involved in abetting Salimbhai Hasanji, Mehboobkhan Pathan, S.R.Yadav, against whom the orders of detention have been passed on the same day i.e. 11/07/1996 for violation of the provisions of clause 3(b), 3(2), 3(3), 3(4), 3(c) and 6(a) of the Liquified Petroleum Gas (Regulation and Supply and Distribution) Order, 1993 by affording them to ply the truck at the detenu farm house and also allowed Mr Salimbhai Hasanji Salejee to store illegally procured liquefied petroleum gas cylinders in the detenu's pucca room no.1 situated in the detenu's farm house. The detaining authority was satisfied that the said activities of the detenu has adversely affected the supplies of the essential commodities viz. LPG gas to the community at large. The detaining authority was further satisfied that, if the petitioner - detenu is permitted to continue his activities, it would affect the smooth supplies of liquefied petroleum gas being distributed under the public distribution system to the public at large.

3. Mr. K.J.Shethna, Sr. Advocate appearing for the petitioner has challenged the order of detention on various grounds. It has been pointed out that the detention of the principal accused viz. Salim Hasanbhai has been quashed by the order of this Court (Coram : M.R.Calla, J.) in Special Civil Application No.5988/96 decided on November 05, 1996. It is submitted that, as the principal offender has been let off, person like the petitioner whose role is alleged to be only to the limited extent of permitting Salim to use his land for storing the LPG gas cylinders, cannot be detained. It is also contended that there is inordinate delay in considering the representation on part of the State Government and the Central Government.

3. Detaining Authority - S.Aparna, District Magistrate, Valsad, in her affidavit, has stated that the first representation through the detenu's advocate Mr. Jamshed B. Pardiwala by telegram was received by her on 22/7/96 and the same was considered and the result thereof was communicated to detenu on 25/7/96 vide letter dated 23/7/96, while the successive representation received on 29/7/96 was considered by her and the result thereof communicated to the detenu on 2/8/96 vide letter dated 31/7/96.

4. So far as the State Government is concerned, Mr. K.S.Vaghela, Under Secretary to the Government of Gujarat, Food & Civil Supplies Department, Sachivalaya, Gandhinagar has filed his affidavit and stated that the representation dated 22nd July 1996 was received by the Department. The file was placed before the Joint Secretary and thereafter, before the Additional Chief Secretary. The matter was then placed before the Deputy Minister, Civil Supplies and the Hon'ble Minister of State, Civil Supplies, who cleared the said file on 25th July 1996. Similarly, with respect to the representation dated Nil August 1996, it is submitted that the same was considered and rejected by the State Government on 6/8/96.

5. So far as the Central Government is concerned, Dr. K.V.Jacob, Under Secretary in the Ministry of Civil Supplies, Consumer Affairs and Public Distribution, New Delhi has filed his affidavit and stated that two representations dated 20th July 1996 and 25th July 1996 were received on 1/8/96 and both the representations were examined on the basis of parawise comments received from the State Government and the other relevant record and the same were accordingly rejected. The decision was conveyed to the Superintendent, Special Jail, Bhavnagar on 16/8/96 by telegram, with direction to convey the same to the detenu.

6. It is pointed out by the learned counsel Mr K.J.Shethna that there is yet another representation Annexure "C", a reference of which has been given in para-2 of the petition. It is pointed out that the State Government has stated that the same was rejected, but there is not a single word with respect to the said representation in the affidavit which has been filed by the officer of the Central Government. Ordinarily, it is for the petitioner to show that the successive representation was different from the earlier representations, however, I am not required to enter into this controversy, as today the affidavit of Mr P.A.Gohil, Superintendent of Bhavnagar Jail has filed affidavit, in which it has been stated that the detenu submitted a representation dated Nil August 1996, which was received by him on 1st August 1996 and it was forwarded to all concerned authorities on the same day. He received a telegram from the Central Government rejecting detenu's said representation on 11/10/96 and the petitioner was given information of the same.

7. It is surprising that there is not a single word or whisper in the affidavit of Dr. K.V.Jacob, an officer from the Central Government with respect to the third representation which was sent by the Jail Authorities on 1st August 1996. It appears that the affidavit of Dr. Jacob has been affirmed on 6th September 1996, at New Delhi.

8. Mr Sunil C. Patel, learned Additional Central Government Standing Counsel, at the first instance, submits that it is not necessary to decide the successive representations as expeditiously as it required to decide the first representation. In support of his contention, a reliance is placed on the decision of the Division Bench of this Court reported in 1994(1) GLR 843 (Bachhrajji Biharilal Pitaliya v. District Magistrate, Surat & ors.). In the alternative, he submits that he may be given further time for filing additional affidavit of the concerned authorities from the Department of Civil Supplies. He also submitted that he has sent a letter by Speed Post on 30th November 1996. I shall first deal with the prayer of adjournment made by the learned counsel for the Central Government. In this matter, the rule was made returnable on 10/09/1996 by the order of this Court dated 30th August 1996. Thereafter, the matters came up before this Court on various dates 19/9/96, 7/11/96, 8/11/96 and lastly on 29/11/96. It may be stated that it is no more in dispute that third representation was sent to Central Government on 1st August 1996 and information of its rejection was received after 2 months and 10 days i.e. on 11/10/1996. Thus, when the affidavit of Dr. Jacob was verified in September 1996, the representation was pending for consideration with the Central Government. In view of this, in all fairness, Dr. Jacob ought to have said with respect to the third representation as to how the same has been dealt with. Even when the matter was adjourned on 29th November 1996, as per the learned counsel, he had informed the concerned officer only by a letter. In view of this, I find no justified grounds to give further opportunity to the Central Government to file the additional affidavit, more particularly when the maximum detention under the PBM Act is six months and the petitioner is under detention since July 11, 1996.

9. I have carefully gone through the Division Bench judgement of this Court referred to above. There can no dispute with respect to the proposition laid down in the said decision that there is no obligation on the authorities to consider successive representations, unless new facts and circumstances are brought to the

notice of the authorities or unless supervening and subsequent facts calling for revocation of order of detention are brought to the notice of authority. Further, there cannot be any dispute with respect to the proposition that the subsequent representations are not necessarily required to be disposed of as expeditiously as the first representation is required to be decided. It is not the case of the Central Government that the third representation was not required to be considered, as there was no supervening and subsequent facts calling for revocation. With respect to the expeditious disposal of the representation also, nothing has been said in the affidavit of Dr. Jacob. Therefore, the delay in deciding the third representation has not at all been explained. Thus, in my view, the unexplained delay in deciding the third representation has infringed procedural rights guaranteed under Art. 22(5) of Constitution of India which is sufficient to vitiate the impugned order of detention.

10. In view of this, this Special Civil Application is allowed. The impugned order of detention dated 11/07/1996j is quashed and set aside. It directed that the petitioner shall be forthwith released, if he is not required in any other case. Rule made absolute. DS permitted.

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